

### REMARKS

In the above-mentioned Office Action, all of the pending claims, claims 1-22, were rejected. Claims 1-3 and 13-15 were rejected under Section 102(e) over *Whinnett*. And, claims 1-22 were rejected under the judicially created doctrine of non-statutory double patenting over claims 1-24 of U.S. Patent No. 6,542,556.

Responsive to the rejections of the claims, independent claims 1 and 13 have been amended as set forth herein. Support for the amendments to the independent claims are found, for instance, in paragraph 8 of the specification and with respect to paragraph 29 that describes the block diagram of the transmitter 150.

With respect to exemplary claim 1, the claim has been amended to recite that the step of non-zero complex weighting forms  $M$  signals. And, the step of transmitting is amended now to recite that the symbol stream is transmitted upon  $M$  transmit diversity paths.  $M$  is recited to be greater than  $N$ . Claim 13 has been analogously amended.

*Whinnett* fails to disclose a method or apparatus corresponding to that recited now in claims 1 and 13. Particularly, there is no disclosure of an apparatus or method in which  $M$  signals are formed from the  $N$  signals of an  $N \times N$  transform and substantially simultaneously transmitted. With respect to Figure 14 of *Whinnett*, a comutator 170 is utilized. Use of a comutator would necessarily prevent the substantially simultaneous transmission of symbol streams upon the  $M$  transmit diversity paths.

With respect to the rejection of the claims under the judicially created doctrine of double patenting, the Applicant defers submission of a terminal disclaimer in light of the amendments made to the claims set forth herein and the just-noted remarks. In the event that the Examiner makes final the double patenting rejection, the Applicant shall submit a terminal disclaimer.

Amendments made to various of the dependent claims are made responsive to amendments to their parent claims and to recite terminology consistent with the specification. Because the dependent claims include all of the limitations of their respective parent claims, these claims are also believed to be patentably distinguishable over the cited references used thereagainst for the same reasons as those given with respect to their parent claims.

In light of the foregoing, independent claims 1 and 13, as now amended, and the dependent claims dependent thereon are believed to be in condition for allowance. Accordingly,

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reexamination and reconsideration for allowance of these claims is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

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